

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

December 3, 2008 Session

TRAVIS JASON WEBB v. MARIE CAROLINE WEBB

**Appeal from the Chancery Court for Anderson County
No. 04CH3919 William E. Lantrip, Chancellor**

No. E2008-00862-COA-R3-CV - FILED FEBRUARY 11, 2009

In this post trial divorce proceeding, Marie Caroline Webb (“mother”) and primary residential parent of the parties’ minor child, Tanner, age five, seeks to relocate to the Cayman Islands. Travis Jackson Webb (“father”) filed a Petition in opposition to relocation. The trial court granted the application to relocate and father appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Johnny Von Dunaway, LaFollette, Tennessee, for the Appellant, Travis Jason Webb.

Thomas Fleming Mabry, Knoxville, Tennessee, for the Appellee, Marie Caroline Webb.

OPINION

Factual Background

The parties were married in 1998 in Anderson County, Tennessee. Their daughter, Tanner Marie Webb, was born on January 31, 2003. A Final Decree of divorce was granted in the Chancery Blount of Anderson County on October 11, 2004. Pursuant to the parenting plan adopted by the court, the mother was designed as the primary residential parent. The father was ordered to pay child support in the sum of Fifty (\$50.00) Dollars per week.

The parenting plan provided the father with extensive co-parenting time, which included alternating weekday visitations of two to three days for three to four hours and alternating weekend visitations. The parenting plan also provided for increased co-parenting time when Tanner reached her sixth and ninth birthdays. The mother also had the right to travel with the child to visit her family and friends for not longer than thirty days. Father would have the opportunity to make up any missed co-parenting time. The parties experienced certain difficulties with the co-parenting schedule, but were able to resolve their difference. Subsequently, the mother informed the father

that she wished to modify the parenting plan. This plan required the parties to mediate any modification of the plan. A date was set for mediation. Prior to the scheduled mediation, the mother sent the father a letter informing him of her intent to relocate to the Cayman Islands. In her letter to the father, the mother indicated that the reasons she wished to relocate included her assurance of a job, the capability of returning to college, family support, superior education opportunities for Tanner, and a better lifestyle. The father filed a Petition in opposition to mother's relocation. On March 18 and 19, 2007, a trial was conducted in the Anderson County Chancery Court. At the conclusion of trial, the trial judge found that the mother's proposed move was not unreasonable; that relocation to the Cayman Islands does not pose a threat of specific and serious harm to the minor child, and the relocation was not vindictive or intended to defeat or deter father's visitation rights. The father appeals, asserting that the trial court erred in his findings.

Standard of Review

The standard of review of a trial court's findings of fact is *de novo* and we presume that the findings are correct unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Rawlings v. John Hancock Mut. Life Ins. Co.*, 78 S.W.3d 291, 296 (Tenn. Ct. App. 2001). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop v. RR Westminister Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). We also give great weight to a trial court's determination of credibility of witnesses. *Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997); *B & G Constr., Inc. v. Polk*, 37 S.W.3d 462, 465 (Tenn. Ct. App. 2000). Issues of law are reviewed *de novo* with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

Analysis

Tennessee Code Annotated section 36-6-108 governs parental relocation with children. The mother is the primary residential parent and pursuant to Tenn. Code Ann. § 36-6-108(d) relocation shall be permitted unless one or more of these factors are found:

- (1) The relocation does not have a reasonable purpose;
- (2) The relocation would pose a threat of specific and serious harm to the child which outweighs the threat of harm to the child of a change of custody, or;
- (3) The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the non-custodial or the parent spending less time with the child.

The mother testified that she desired to relocate because of the better job opportunities and greater pay in the Cayman Islands. At the time she notified the father of her intention to relocate, she was employed at Spectrum as an account representative. She testified that she earned approximately Thirty Seven Thousand (\$37,000) per year. However, she had recently lost her job with Spectrum because of downsizing. She was now employed with Path Group at a lower salary.

The mother testified about the financial difficulties she was experiencing maintaining an apartment in a safe and secure environment for her minor child that was more expensive than housing in a less secure neighborhood. She testified that she provided 90% of the financial support for the minor child and it was difficult economically to provide the minor child with the activities normally associated with growing children such as gymnastics and other activities. She testified that she was living “hand to mouth.” She had investigated moves to other areas of Tennessee but determined that the job opportunities were limited.

In contrast, mother testified that she would have greater financial opportunities and advantages in the Cayman Islands. She presented no proof that she had a firm job established in the Cayman Islands. However, she did testify about a job opportunity with Edgewater with a salary of Forty-Eight Thousand (\$48,000) Dollars. She also had researched other offers for jobs. She testified it would not be difficult for her to obtain employment within two to three weeks of arrival. Mother further testified that her grandmother was of Cayman descent. As a result of this relationship, she would be allowed to apply for Caymanian status. If she obtained status as a Caymanian she would have job priority over non Caymanians¹ and she would be able to work on the islands indefinitely without a work permit. She further testified that the standard of living in the islands was the highest in the Caribbean. The cost of living might be higher on the islands than Tennessee, but this factor was offset by the absence of taxes. Finally, she testified that she had a large family in the Cayman Islands that would provide support both financially and economically.

This court has consistently held that a salary increase and career advancement opportunities “can be a factual predicate to constitute a reasonable purpose for relocation.” *Roberts v. Roberts*, No. E2005-01175-COA-R3-CV, Tenn. App LEXIS 685, 2005 WL 2860199 at *6 (Tenn. Ct. App. Oct. 31, 2005) (citing *Price v. Bright*, No. E2003-02738-COA-R3-CV, 2005 Tenn. App., LEXIS 40, 2005 WL 166955 at *11 (Tenn. Ct. App. Jan. 26, 2005)); *Butler v. Butler*, No. M2002-00347-COA-R3-CV, 2003 Tenn. App., LEXIS 133, 2003 WL 367241 at *2 (Tenn. Ct. App. Feb. 20, 2003), *Elder v. Elder*, No. M1998-00935-COA-R3-CV, 2001 Tenn. App., LEXIS 681, 2001 WL 1077961 at *5 (Tenn Ct. App. Sept. 14, 2001); *Leach v. Leach*, No. W2000-00935-COA-R3-CV, 2001 Tenn. App., LEXIS 467, 2001 WL 720635 at *4 (Tenn. Ct. App. June 25, 2001); *Connell v Connell*, No. 03A01-9908-CV-00282, 2000 Tenn. App., LEXIS 28, 2000 WL 122204 at *4 (Tenn. Ct. App., Jan. 25, 2000). It is not enough, however, that there exist a mere hope or belief of a better opportunity or a salary increase. *Mitchell v. Mitchell*, No. M2004-00849-COA-R3-CV 2005, Tenn. Ct. App., LEXIS 355, 2005 WL 1521850 at *3 (Tenn. Ct. App. June 27, 2005); *Slaton v. Ray*, No. M2004-01829-COA-R3-CV 255, Tenn App., LEXIS 666, 2005 WL 2756076 at *3 (Tenn. Ct. App. Oct. 24, 2005). Moreover, an increase in pay is but one of several economic factors that should be considered. Other relevant economic factors that are typically considered include, without limitation, the relative significance of the increase, the cost of living in the proposed location compared to the present location, the firmness of the job offer, and opportunity for career advancement and economic betterment of the family unit. Because the mother did not have a firm job offer at trial, husband

¹ Mother was allowed to supplement the record with a Certificate from Caymanian Status and Permanent Residency Board that she had been granted Caymanian status effective the 7th day of October 2008.

insists that her job opportunities are speculative and do not establish a “reasonable purpose” within the meaning of the statute. The trial court found that:

[U]nder the circumstances of this case, that because of the mother’s financial constraints, the loss of her job, and her financial plight, that the proposed move is not unreasonable under all the circumstances of this case.

The trial court further found that her job opportunities were more than a probability and that she had job offers that could not be accomplished until she had her status determined in the Cayman Islands.

Anthony and Jeanette Verhoeven, the brother and stepmother respectively of mother, testified about the job opportunities available in the Cayman Islands. Anthony Verhoeven testified that he has recently moved from the United States to the Cayman Islands. He testified about his numerous job offers and the ease with which he found a job. Both testified about the benefits and advantages the mother would obtain if she were granted Caymanian status. Jeanette Verhoeven had worked in the United States, Anderson County, and the Cayman Islands. Ms. Verhoeven testified she was a registered nurse, but was not working in the medical field in the Cayman Islands, because she makes twice the money in the insurance field that she would as a registered nurse. She further testified that due to her employment and family connections in the Cayman Islands, she had numerous contacts for employment for the mother. She testified that the mother had job offers, but because of the uncertainty of her move was unable to formalize the offers. Both brother and stepmother testified about the better opportunities for career advancement in the Caymanian Islands for those that have attained Caymanian status. Finally, both testified that the mother would have both financial and emotional support from her extended family in the Cayman Islands.

Considering the entire record, we have concluded that the evidence does not preponderate against the trial court’s finding that mother has a reasonable purpose to relocate with the parties’ minor child to the Cayman Islands.

Next, the father asserts that relocation would pose a threat of specific and serious harm to the child because of the separation of the minor child from the father and other family members with whom she has had significant relationships, and from the only place she has lived. In support of his argument, the father cites *Nigro v. Nigro*, 2003 WL 21634320 (Tenn. Ct. App July 11, 2003) as an example of the loss of a chance to establish a relationship with a parent may pose a threat of “specific and serious harm.” However, *Nigro* dealt with a situation in which a parent was attempting reconciliation with a minor child and the trial court’s ruling was on a temporary basis. Further, in the case at bar, father has an established relationship with the minor child. The mother will receive the support of her extended family for the care and support of the minor child. There is no indication that the child possesses a serious medical condition for which adequate treatment would not be readily available in the Cayman Islands. See Tenn. Code Ann. § 36-6-108(d)(2)(B). The record reveals that the Cayman Islands currently have an adequate, if not exceptional school system. Mother has investigated various private schools that are available for the minor child. Mrs. Jeanette Verhoeven testified that she was intimately familiar with the quality of schools in the Caymans, the resources, including scholarships available in the Islands. There is no indication that mother would not be able to adequately parent the child. See Tenn. Code Ann. § 36-6-108-(d)(2)E.

Consequently, we conclude that the evidence does not preponderate against the trial court's finding that the purposed relocation does not pose a threat of specific and serious harm to the minor child.

Finally, the record is devoid of any evidence that the move is vindictive. The parties have had their difficulties with the parenting plan, but have been able to resolve their differences. Under the proposed parenting plan based upon the relocation, the father will receive more co-parenting time than before. The evidence does not preponderate against the trial courts finding that the proposed relocation was not vindictive. The trial court's findings are affirmed and costs of this appeal are assessed against the father.

JON KERRY BLACKWOOD, SENIOR JUDGE